

E-filed on June 19, 2006

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[Proposed] Attorneys for the Official Committee of Equity Security
 Holders of USA Capital Diversified Trust Deed Fund, LLC

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:
 USA COMMERCIAL MORTGAGE COMPANY,
 Debtor.

In re:
 USA CAPITAL REALTY ADVISORS, LLC,
 Debtor.

In re:
 USA CAPITAL DIVERSIFIED TRUST DEED
 FUND, LLC,
 Debtor.

In re:
 USA CAPITAL FIRST TRUST DEED FUND, LLC,
 Debtor.

In re:
 USA SECURITIES, LLC,
 Debtor.

Case No. BK-S-06-10725 LBR
 Case No. BK-S-06-10726 LBR
 Case No. BK-S-06-10727 LBR
 Case No. BK-S-06-10728 LBR
 Case No. BK-S-06-10729 LBR

Chapter 11

Jointly Administered Under
 Case No. BK-S-06-10725-LBR

Date: June 21, 2006

Time: 9:30 a.m.

Place: Courtroom 1

**LIMITED OPPOSITION OF
 DIVERSIFIED COMMITTEE TO
 DEBTOR'S MOTION FOR ORDER
 APPROVING AGREEMENT WITH
INVESTMENT PARTNERS**

Affects:

- ☒ All Debtors
- ☐ USA Commercial Mortgage Company
- ☐ USA Securities, LLC
- ☐ USA Capital Realty Advisors, LLC
- ☐ USA Capital Diversified Trust Deed Fund, LLC
- ☐ USA First Trust Deed Fund, LLC

TO THE HONORABLE LINDA B. RIEGLE, UNITED STATES BANKRUPTCY JUDGE:

The Official Committee of Equity Security Holders of USA Capital Diversified Trust Deed Fund, LLC (the "Diversified Committee"), appointed in the above-captioned bankruptcy case of USA Capital Diversified Trust Deed Fund, LLC (the "Case"), hereby files its limited opposition to the Debtors' Motion For Order Approving Agreement With Investment Partners ("Debtors' Motion"). In support of this limited opposition, the Committee represents as follows:

I.**BACKGROUND.**

1. On April 13, 2006 (the "Petition Date"), USA Capital Diversified Trust Deed Fund, LLC ("Diversified Fund"), USA Commercial Mortgage Company ("USA Mortgage"), USA Securities, LLC ("USA Securities"), USA Capital Realty Advisors, LLC ("USA Realty") and USA Capital First Trust Deed Fund, LLC ("USA First" and, collectively with USA Mortgage, USA Securities, USA Realty and Diversified Fund, the "Debtors") filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code ("Bankruptcy Code").

2. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. On May 10, 2006, the Office of the United States Trustee (the "U.S. Trustee") appointed four separate committees in the Debtors' chapter 11 cases (collectively, the "Debtors' Cases"), including one in each of the Diversified Fund, USA Securities and USA First cases.

4. The Diversified Committee selected its bankruptcy counsel on June 1st and selected its Nevada counsel and its financial advisor on June 9th, the same day as the Debtors filed the Debtors' Motion – with no advance notice to the Diversified Committee or any other committee. Since the filing of the Debtors' Motion, the professionals employed by Debtors have

1 had one short meeting with the professionals employed by the Diversified Committee (following
 2 the hearings on June 15th) and the two groups participated in a lengthy conference call on the
 3 afternoon of Friday, June 16th. In addition, the Diversified Committee received from the Debtors
 4 on June 13th copies of what appear to be a small portion of the loan documents relating to the 10-
 5 90, Inc. loan, which, as described below, is linked to the Debtors' Motion. Accordingly, while
 6 the Diversified Committee has begun to learn about the background facts necessary to fully
 7 respond to the Debtors' Motion, it cannot make a fully informed decision as of the filing deadline
 8 of noon on June 19th.¹

9 II.

10 THE 10-90, INC. LOAN.

11 5. From information gleaned from the pleadings previously filed in this Case, from
 12 the meeting and conference call described in paragraph 4 hereof, from the documents provided on
 13 June 13th, and from the information recited in the Debtor's Motion and the promissory note and
 14 security agreement attached as exhibits to the Debtor's Motion, the Diversified Committee
 15 believes that:

16 (i) Diversified Fund is a Nevada limited liability company owned almost
 17 entirely by some 1900 investors that are otherwise unaffiliated with the Debtors;

18 (ii) Diversified Fund participated as a lender in at least 23 loans that
 19 remain outstanding, having an ownership percentage in such loans anywhere from
 20 .07% to 100% with a principal balance attributable to Diversified Fund's percentage
 21 ownership in such 23 loans of approximately \$110 million;

22 (iii) among such loans is a 2002, non-performing loan to an entity named
 23 10-90, Inc. with a reported balance of \$55,113,781, **which loan is owned 100% by**
 24 **Diversified Fund;**

25
 26
 27 ¹ Counsel and the Financial Advisor for the Diversified Committee will be arriving at the Debtors'
 28 headquarters on June 19th in an attempt to review documents and meet with those knowledgeable about the subject
 matter of the Debtors' Motion and about the 10-90, Inc. loan.

(iv) the 10-90, Inc. loan is by far the largest loan in the entire portfolio of loans originated by these Debtors – the second largest loan has a reported principal balance of just under \$35 million;

(v) although not dealt with in the Debtor's Motion, the 10-90, Inc. loan proceeds were used by 10-90, Inc. to fund loans to USA Investment Partners, LLC (“Investment Partners”), the entity that is the subject of the Debtor's Motion; as a result of a transaction occurring in January, 2005, the promissory note in favor of 10-90, Inc. as lender was assigned to Diversified Fund, effectively eliminating the middle-man role of 10-90, Inc.;

(vi) as a result, Diversified Fund is now a direct lender by way of assignment to Investment Partners; and

(vii) the Diversified Committee has extremely limited information as to whether Investment Partners has previously provided collateral to 10-90, Inc. or to Diversified Fund as the assignee of 10-90, Inc.

6. The Diversified Committee is concerned that the Debtors and their professionals are attending to many other matters in addition to the 10-90, Inc. loan and further concerned that such professionals represent all the Debtors and not just Diversified Fund. These concerns, added to the facts that the 10-90, Inc. loan is:

(i) 100% owned by Diversified Fund;

(ii) the largest loan in the portfolio representing almost 50% of the potential recovery for the Diversified Fund investors; and

(iii) a loan made to an insider entity;

have caused the Diversified Committee to determine that the Diversified Committee should immediately investigate all of the available information bearing upon the facts and circumstances surrounding the 10-90, Inc. loan (and several other loans belonging 100% to Diversified Fund).

7. As noted above, the Diversified Committee's professionals hope to inspect the books and records regarding the 10-90, Inc loan *today*, but as of the time of the filing of this

pleading, the Diversified Committee is in possession of only about ten loan documents containing no information on the prospects for collection of this non-performing loan.

III.

THE DEBTORS' MOTION.

8. The Debtors seek this Court's approval for an agreement with Investment Partners. The nature of that agreement is as follows:

(i) Investment Partners will execute a promissory note in favor of USA Mortgage in the amount of \$58.3 million representing the agreed amount of the obligations owing to Debtors (the nature and basis of which are unknown to the Diversified Committee)²;

(ii) there is no payment schedule under the \$58.3 million promissory note (prepayments are mandatory upon the liquidation of Collateral), and the maturity date is May 31, 2007, provided that the maturity will be extended by one year in the event that \$20 million is paid prior to the maturity date (these provisions appear to be the forbearance provisions in favor of Investment Partners alluded to in paragraphs 6 and 11 of the Debtors' Motion);

(iii) Investment Partners will provide a security agreement in favor of USA Mortgage and all of the other Debtors (including Diversified Fund);

(iv) the obligations to be secured under such security agreement consist not only of the \$58.3 million promissory note in favor of USA Mortgage, but also the promissory notes originally given by Investment Partners to 10-90, Inc. and later assigned by 10-90, Inc. to Diversified Fund, as well as any other obligations that may be determined to be owing from Investment Partners to any of the Debtors (see, section 1.1 of the security agreement attached as Exhibit B to the Debtors' Motion); and

² The Diversified Committee understands that the Debtor is agreeable to immediately assigning the \$58.3 million note to *all* of the Debtors as their interests may later be determined, as a result of concerns expressed by the Diversified Committee that a court order authorizing a promissory note payable solely to one Debtor may later preclude the other Debtors from claiming an interest in the recovery from Investment Partners.

(v) Investment Partners may receive up to 10% of the amounts collected on the Collateral to defray its collection expenses (the "Expense Carve-Out" - section 13 of the security agreement).

9. Section 8 of the security agreement to be provided by Investment Partners states in part as follows:

Secured Party acknowledges that Debtor [Investment Partners] has granted or will grant to USA Capital Diversified Trust Deed Fund a security interest in Debtor's membership interest in Capital Land Investors, LLC; Random Developments, LLC; Ashby USA, LLC; Oak Mesa Investors, LLC; and Buffalo Land Developments, LLC, in connection with obligations owed to USA Capital Diversified Trust Deed Fund including the 10-90 Loan.

Security Agreement, ¶ 8.

IV.

LIMITED OBJECTION TO THE DEBTORS' MOTION.

10. The Diversified Committee obviously agrees that it is in the best interests of all of the Debtors' estates that unsecured obligations owing to the Debtors be secured, and no objection is raised to that portion of the Debtors' Motion.

11. However, it appears that monies of Diversified Fund were utilized by Investment Partners to acquire some or possibly all of the assets of Investment Partners (such as the 2002 loans to 10-90, Inc. by Diversified Fund in excess of \$55 million and the lending of those funds by 10-90, Inc. to Investment Partners) such that the lien of Diversified Fund should be senior in priority and right of collection to the lien of the other Debtors.

12. It further appears that Diversified Fund has a pre-existing entitlement to liens upon the assets of Investment Partners (the acknowledgement contained in paragraph 8 of the security agreement set forth above, for instance).

13. In addition, the agreement to allow Investment Partners to retain up to 10% of amounts collected on the Collateral appears to be a very unusual provision that is in contradiction to the terms of the 2002 loan agreement governing the terms of the \$55 million loan belonging to Diversified Fund.

VI.

CONCLUSION.

WHEREFORE, for all of the foregoing reasons, the Diversified Committee requests that the Court enter an order approving the Debtors' Motion with the limitations and provisos set forth above.

Respectfully submitted this 19th day of June 2006.

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By 

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